



KNOLL LEIBEL ^{LLP}
ATTORNEYS AT LAW

May 23, 2024

VIA U.S. MAIL & E-MAIL ONLY: ndpsc@nd.gov

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

RE: In the Matter of the Application of SCS Carbon Transport LLC for
Certificate of Corridor Compatibility and Route Permit for the Midwest
Carbon Express
Case No.: PU-22-391

Dear Mr. Kahl:

Enclosed for filing please find the following documents:

1. Motion to Compel; and
2. Declaration of Service.

This Motion is being filed with the North Dakota Public Service Commission (hereinafter "NDPSC") on behalf of the Intervenors represented by Knoll Leibel LLP. These Intervenors have a direct and substantial interest in these proceedings, as well as legal property rights which may be substantially affected by NDPCS' findings and conclusions.

Sincerely,

KNOLL LEIBEL LLP

Steven J. Leibel

steve@bismarck-attorneys.com

SJL: rmo

Enclosures

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Motion to Compel

Knoll Leibel, LLP, on behalf of the Intervenors
Steven Leibel, Attorney

Steven J. Leibel, Partner

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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION
OF SCS CARBON TRANSPORT LLC FOR
A CERTIFICATE OF CORRIDOR
COMPATIBILITY AND ROUTE PERMIT
FOR THE MIDWEST CARBON EXPRESS
PROJECT IN BURLEIGH, CASS, DICKEY,
EMMONS, LOGAN, MCINTOSH,
MORTON, OLIVER, RICHLAND AND
SARGENT COUNTIES, NORTH DAKOTA

Case No. PU-22-391

MOTION TO COMPEL

[1] COMES NOW Landowner Intervenor¹, represented by their attorneys of record KNOLL LEIBEL LLP (Steven J. Leibel) and DOMINA LAW GROUP (Brian E. Jorde), and hereby submits this *Motion to Compel* in the above-entitled action.

[2] The undersigned hereby moves this Commission to compel SCS Carbon Transport LLC (hereinafter “Summit”) to provide complete supplemental answers and responses to *Intervenors’ Interrogatories, Request for Admissions, and Requests for Production to SCS Carbon Transport LLC (Set 3)* (Doc. #481), which were served on March 28, 2024, pursuant to N.D.C.C. § 28-32-33. Summit has failed to provide substantive and meaningful responses to reasonable discovery requests for evidence; instead, Summit offers blanket objections and refuses to divulge any information.

¹ See Order Granting Petition to Intervene (Doc. 82, 83, 159, 168, 204, 511, and 512).

[3] Undersigned counsel provided a substantially similar copy of this motion to counsel for Summit on Tuesday, May 21, 2024 and asked whether Summit would reconsider its position. As of this date, Summit has not responded.

[4] Pursuant to N.D.C.C. § 28-32-33(1), discovery may be permitted in accordance with the North Dakota Rules of Civil Procedure. Further, “upon the request or motion of any party to the proceeding... a hearing officer may issue... discovery orders” in accordance with the North Dakota Rules of Civil Procedure. N.D.C.C. § 28-32-33(2). The Commission should exercise this authority to compel a response from Summit to the following discovery requests:

A. Intervenors’ Request No. 1 requests copies of GIS shapefiles for the currently proposed North Dakota pipeline. Summit objects to providing these shapefiles on grounds that it is protected from public disclosure. Summit also cites the *Order on February 8, 2023 Application of SCS Carbon Transport LLC to Protect Information February 28, 2023*, filed on March 2, 2023, which allowed Summit to file this information with the Commission without disclosure to the public. The Commission should reconsider this order and Summit should be compelled to provide GIS data because it provides Intervenors and the public with descriptive and detailed aerial color map files which are relevant to the survey and examination of the locations subject to the construction of hazardous carbon dioxide pipelines on, under, across and/or through said locations. Further, there is no undue hardship on Summit to

produce these documents, as copies of the GIS shapefiles are readily available and accessible to Summit as they are often used within their regular course of business.

B. Intervenor's Requests No. 2 through 7 seek for Summit to provide copies of contracts, agreements, correspondence, understandings, letters, memoranda, etc., for any affiliated entity or person that is in any way related to the capture and sequestration of carbon dioxide in North Dakota. This information will show the pipeline construction effects on the landowners of North Dakota, potential affiliations with foreign citizens/within foreign nations, and/or other relevant adversarial ownerships of real property interests in North Dakota. Further, Intervenor's deserve to know which facilities and/or entities in North Dakota are affiliated with Summit or in contractual relationships with Summit, along with the substance of the aforementioned agreements, especially with regard to the safety procedures concerning carbon dioxide sequestration, capture, containment, or transportation, the amount of carbon dioxide contributed into the pipeline, and any other information relevant to the procedures and agreements that Summit is engaged in.

C. Intervenor's Request No. 14, seeks communications between Summit and its employees or agents with any non-Summit employee(s) who previously testified or offered pre-filed testimony in this matter and for

anyone Summit anticipates testifying in the future. Summit objects to this request to the extent it seeks communications with the Intervenor, who have equal access to such communications. However, this request is not intended to seek attorney/client communications with which the Intervenor has complete access to; rather, it seeks to discover relevant communications between Summit and any separate entity regarding the testimony in this proceeding. This request is standard in regular civil discovery.

D. Intervenor's Request No. 15, seeks communications of any kind between Summit and any third-party as to how it prepared reports relevant to the inquiry of this proceeding. Similar to Request No. 14, this request is standard in regular civil discovery and the Intervenor has the right to discover the valuable data within such documentation, along with the facts known and opinions held by any third parties in anticipation of litigation or trial. Further, it is vital for Intervenor to effectively address the protected documents that Summit has provided this Commission and even more importantly, without a response from Summit, this Commission has no way of discovering the accuracy and candor of the documents Summit has provided them.

E. Intervenor's Request No. 16 seeks correspondence and communications between Summit and Ethanol Plants (i.e., employee(s) of any carbon dioxide emitter located in North Dakota). Similar to Request No. 14,

this request is standard in regular civil discovery and the Intervenor
have the right to discover the facts known and opinions held by any
parties engaged in carbon dioxide emission in anticipation of litigation
or trial.

[5] These Requests for Production of Documents are reasonably specific and
relevant to the inquiry of this administrative proceeding, are not unduly broad or
burdensome, and are not made for purposes of delay.

PRAYER FOR RELIEF

Intervenor's respectfully request that this Commission exercise its authority
under N.D.C.C. § 28-32-33 and grant this motion to compel, requiring Summit to
produce complete documentation responsive to the aforementioned discovery
requests.

Dated this 23rd day of May, 2024.



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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE APPLICATION
OF SCS CARBON TRANSPORT LLC FOR
A CERTIFICATE OF CORRIDOR
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MORTON, OLIVER, RICHLAND AND
SARGENT COUNTIES, NORTH DAKOTA

Case No. PU-22-391

DECLARATION OF SERVICE

[1] Rosanne Ogden declares that I am of legal age and not a party to this action, and that I served the following document(s):

1. Motion to Compel; and
2. Declaration of Service.

[2] On May 23, 2024, by sending a true and correct copy thereof by electronic means only to the following email addresses, to wit:

John Maurice Schuh Bar ID 08138
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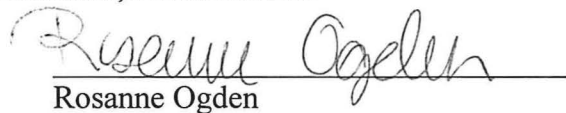
[3] and by sending the originals and seven (7) copies of said documents via U.S. Mail, at Bismarck, North Dakota with postage prepaid, to the following:

Steve Kahl
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

[4] The addresses of each party served are the last reasonably ascertainable e-mail address and post office address of such party.

[5] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 23rd day of May, 2024 at Bismarck, North Dakota.


Rosanne Ogden